

Date: March 17, 2020

To: Environmental Quality Commission

From: Richard Whitman, Director

Subject: Proposed Order Delegating Authority to the DEQ Director to Issue a Temporary Variance of the Requirement for Inspection of Certain Motor Vehicles (Action) March 18, 2020, EQC meeting

Purpose DEQ is requesting that the commission approve an order authorizing the Director to issue a temporary variance of the requirement for emissions inspections for certain motor vehicles. The purpose is to authorize a short-term deferral of vehicle testing in order to avoid heightened risk of transmission of COVID-19 resulting from the frequency and nature of inspections and the lack of suitable alternatives.

Recommendation DEQ recommends that the Oregon Environmental Quality Commission approve the proposed order, attached to this report.
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Background The reasons for this proposed order are described in the findings in the order itself. Director Whitman will present additional background and information at the commission meeting.
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Attachments A. Proposed Order

Order Approving a Temporary Variance to the Requirement for Vehicle Testing

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

In the matter of authorizing the)
Director of the Department of)
Environmental Quality to grant a temporary) FINDINGS and
Variance to the requirement for emissions) ORDER
testing for certain motor vehicles in the)
Portland and Rogue Valley Regions)

Findings

On March 8, 2020, Oregon Governor Kate Brown declared an emergency throughout the state in response to the COVID-19 virus pandemic. The Governor's directive was to facilitate social distancing, intended to prevent the spread of the virus in communities throughout the state.

The Oregon Department of Administrative Services (DAS) Policy 60.015.01 (10/25/2019) specifies that an agency head, or their authorized designee, may authorize curtailment of agency operations or close agency worksites or facilities based on a variety of reasons, including contagious illness.

The Vehicle Inspection Program requires emissions testing of 1975 and newer vehicles registered in the Portland metro region and in the Rogue Valley region, with vehicles in 2017 and newer model years exempted. In total, the VIP performs more than 680,000 annual inspections and issues over 570,000 certificates of compliance, primarily through work at seven inspection stations. In short, some stations are performing as many as 100,000 inspections each year.

The high volume of inspections and the nature of the inspections – typically involving opening vehicle doors and connecting a diagnostic cable, creates a higher than normal risk of transmission of COVID-19 for lane inspectors. With shortages of gloves and masks, appropriate personal protective equipment is in short supply, and rightly prioritized for health care facilities.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) has issued “Guidance on Preparing Workplaces for COVID-19” (March 2020) that identifies medium exposure risk jobs as including those that require frequent and/or close contact with (i.e., within 6 feet of) people who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19 patients. For the reasons described above, lane inspectors likely fall within this category. OSHA recommends that workers in this category be provided with personal protective equipment, or that employers take other administrative steps to minimize contact. Due to shortages of protective equipment, and the inability to implement administrative means to limit contact at least in the short term, the commission finds that there is a higher than normal risk to these workers, warranting a temporary suspension of the program until at least April 14, 2020 (two incubation periods for COVID-19 based on current information).

Certain motor vehicle owners must obtain a motor vehicle control system certificate of compliance from DEQ as a prerequisite to renewing their motor vehicle registration, as provided in ORS 803.350. DEQ's decision to close its VIP stations therefore may prevent certain persons from renewing their vehicle registration during the period of this emergency, unless the Oregon Department of Motor Vehicles (DMV) determines to grant a registration renewal deadline extension. Such inability to renew a vehicle registration due to the lack of such certificate of compliance is a condition beyond the control of persons who own a motor vehicle with a vehicle registration that has expired or will expire between February 14, 2020, and April 14, 2020, and such special circumstances render strict compliance with that requirement unreasonable, burdensome and impractical due to the special physical conditions (i.e., the physical closure of those stations). In addition, no alternative method of handling such inspections is available, consistent with the social distancing requirements of the current emergency.

For the reasons described above, unless the Oregon Department of Motor Vehicles (DMV) determines to grant a registration renewal deadline extension, strict compliance with the motor vehicle pollution control system certificate of compliance requirements of OAR 340-256-0300 through 340-256-0465 are inappropriate for any person who owns a motor vehicle with a registration that will expire between February 14, 2020, and April 14, 2020, and who is subject to the requirement that it obtain such a certificate of compliance as a prerequisite to renewing its registration, under ORS 803.350.

Order

On the basis of these findings, the commission, by this order, delegates authority to the Director of the Department of Environmental Quality to grant a variance under ORS 468A.075, if the director determines that such variance is necessary, appropriate, and remains consistent with the commission's findings above, subject to the following requirements, limitations and conditions:

- (1) Class of persons eligible for the variance: Any owner of a motor vehicle with a registration that will expire between February 14, 2020, and April 14, 2020, and that is subject to the requirement to obtain such a certificate of compliance as a prerequisite to renewing the vehicle's registration, under ORS 803.350;
- (2) Variance substance: DEQ may issue a motor vehicle pollution control system certificate of compliance, under OAR 340-256-0300 through 340-256-0465, notwithstanding that the owner's motor vehicle has not been physically inspected for compliance with the requirements of OAR 340-256-0300 through 340-256-0465; and
- (3) The motor vehicle owner must successfully complete a pollution control system inspection in compliance with the requirements of OAR 340-256-0300 through 340-256-0465 not later than September 30, 2020, including paying applicable fees for such inspection. If an owner does not comply with this condition, then the owner must pay the applicable DEQ fees for issuance of this certificate of compliance the next time the owner requests a vehicle inspection for compliance with the requirements of OAR 340-256-0300 through 340-256-0465.

The commission further delegates its authority under ORS 468A.075 to the Director either (i) to modify the date parameters provided in sections (1) and (3) of this order, if the COVID-19 emergency persists and the Director determines that VIP stations must remain closed beyond April 14, 2020, to maintain social distancing protocol, or (ii) to make other technical modifications to any such variance as deemed necessary and appropriate by the Director.

Dated: _____

ON BEHALF OF THE COMMISSION
